

MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
WORKERS' COMPENSATION AGENCY  
LANSING, MICHIGAN

**ADEQUACY OF BENEFITS PAID UNDER  
THE WORKERS' DISABILITY COMPENSATION ACT  
FOURTEENTH BIENNIAL STUDY**

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This report is submitted biennially in odd-numbered years by March 1 of the reporting year. The report is prepared under the statutory obligation of MCLA 418.364, which requires "The study shall evaluate the effects of inflation on benefits and other factors which the director considers relevant." It is time for a look at the "other factors" that impact injured workers in this state who receive workers' compensation benefits.

Michigan is a "wage loss compensation" state. This is sometimes referred to as a spendable earnings approach. The wage loss compensation provided to an injured worker is generally calculated as 80% of the after-tax value of the average weekly wage (aww) at the date of injury. Although there are several alternative calculations for specific situations, typically the average weekly wage is calculated by taking the average of the highest 39 of the previous 52 weeks of wages from all employments prior to the injury date. The value of discontinued fringe benefits is also included in cases where the wage loss compensation rate is below 2/3 of the state average weekly wage. Calculation of benefits requires analysis of tax filing status and dependency. Rates in death cases are even more complicated by different dependency rules. To facilitate the calculations, the Agency publishes lengthy rate tables each year and provides a computer based calculation program that requires annual programming adjustment.

The impact of inflation on the specific weekly wage loss compensation rate is easily measured by calculation. Although rates overall have increased over time due to increases in the state average weekly wage, higher wage earners continue to suffer from the impact of the **maximum rate limits**. For injuries occurring in 2009, a married worker (filing a joint return) with one dependent earning over \$1,282 per week does not receive any additional compensation beyond the maximum weekly wage loss compensation rate of \$752. That \$1,282 weekly wage is equal to \$32.05 per hour and there are many skilled workers earning more. Also, higher wage earners tend to have fringe benefit plans but the value of those plans drops out of the calculation for workers eligible for more than \$556.53 per week in workers' compensation wage loss benefits. Recent changes in the Michigan personal income tax rates have resulted in a reduction in the weekly wage loss compensation rate for many of those injured in 2009.

Weekly wage loss benefit rates are calculated on the "after tax" value of the earnings. The 1981 amendments to the Workers' Compensation Act, as interpreted by the Michigan Court of Appeals, preclude adjustment of after tax earnings calculations based on revised Federal Tax code provisions which would increase an injured worker's weekly benefit rate.

Although MCLA 418.356 provides for an increase in benefits after "**2 years of continuous disability**," this only applies to lower wage loss compensation rate cases. The increase only comes if the worker has a weekly compensation rate that is less than 50% of the state average weekly wage (\$417.40 for 2009). The worker also must show 2 years of disability at a level similar to that required for Social Security Disability. However, if the worker is disabled to that extent, it is likely that SSD benefits are being paid and the increase from the 2 year continuous benefit will do little more than reduce the SSD benefit due to caps specified in the SSD program.

There are **age-based reductions** in benefits that need to be addressed:

- Under present law, when a worker is receiving benefits, there is a 5% reduction in weekly benefits at age 65 and an additional 5% reduction each year thereafter until the weekly benefit rate is cut in half. (MCLA 418.357(1)). This is different than the coordination of benefits (MCLA 418.354) for age-based social security with the requirement that the worker apply for social security retirement benefits when eligible to do so. The Social Security Administration has revised the age for full retirement on a graduated basis. “Boomers” will have to reach age **66** or more to receive full benefits and being forced to apply early would adversely affect long term benefit amounts. The statutory age reduction in the weekly benefit rate commences before the worker is eligible for full social security retirement benefits.
- Workers are staying on the job significantly longer than age 65 and are working for more than “pocket money” to supplement social security benefits.
- Recent case law regarding work related aggravation of degenerative conditions has severely limited the opportunity for injured workers age 65 and older to receive wage loss compensation benefits. (*Rakestraw v. General Dynamics Land Systems*).

The **vocational rehabilitation** benefits available under the Act only provide for a maximum of 104 weeks of training. For workers needing a significant change in their skill set to facilitate finding new employment, revision in the existing benefit structure for rehabilitation is in order. By way of example, it is a long road from unskilled heavy laborer work to computer literacy, often a necessary pre-requisite to finding and maintaining a sedentary job.

Michigan workers’ compensation costs to business continue to be among the lowest in the nation. In its bi-annual study of workers’ compensation insurance premiums across the country, the *2008 Oregon Workers’ Compensation Premium Rate Ranking Summary* found that Michigan premiums were tied with New Mexico and Wisconsin for 32nd place, among the lowest third in the nation. Michigan rates in the study are less than Alabama (9<sup>th</sup>), Louisiana (12<sup>th</sup>), Texas (17<sup>th</sup>), and many others often thought to be much cheaper than Michigan when it comes to WC insurance costs.

Respectfully Submitted,

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